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Docket No.: 210356US0

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COMMISSIONER FOR PATENTS
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RE: Application Serial No.: 09/903,769

Applicants: Laurence SEBILLOTTE-ARNAUD, et al.

Filing Date: July 13, 2001

For: COSMETIC CLEANING COMPOSITION

Group Art Unit: 1751

Examiner: B. Mruk

SIR:

Attached hereto for filing are the following papers:

Request for Reconsideration w/Tabs A and B.

Our check in the amount of -0- is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF

Laurence SEBILLOTTE-ARNAUD, et al. : EXAMINER: B. MRUK

SERIAL NO: 09/903,769 :

FILED: JULY 13, 2001 : GROUP ART UNIT: 1751

FOR: COSMETIC CLEANSING COMPOSITION

REQUEST FOR RECONSIDERATION

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Office Action mailed October 22, 2003, Applicants respectfully request reconsideration of the above-identified application in view of the following remarks.

Claims 1-4 and 6-29 are currently pending in this application, although claims 17-20 have been withdrawn from consideration. Upon indication of allowable subject matter, Applicants intend to seek rejoinder of claims 17-20 as appropriate.

The Office Action rejected claims 1-4, 6-13, 16, 21, 22, 23, 25 and 27-29 under 35 U.S.C. § 102 as anticipated by EP 514760 ("Uemura"). The Office Action also rejected claims 1-4, 6-16 and 21-29 under 35 U.S.C. § 103 as obvious over U.S. patent 6,277,797 ("Glenn") and PCT patent application publication no. WO 96/28140 ("Glenn"). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

Application No. 09/903,769
Reply to Office Action of October 22, 2003

Regarding the §102 rejection, the Office Action relies upon the mistaken belief that the silica in Uemura's example 7 is inherently hydrophobic to support this rejection. However, it cannot be assumed that the silica in Uemura's example 7 is hydrophobic. Silica is not inherently hydrophobic. Rather, it is hydrophilic (but can be modified so that it is hydrophobic). (See, U.S. patents 5,843,407 (col. 5, lines 60-62) and 4,119,712 (col. 1, lines 39-42), copies attached hereto as Tabs A and B, respectively). Because Uemura does not expressly state that the silica in his example 7 is modified so as to be hydrophobic, it does not necessarily follow that such silica is hydrophobic. Indeed, given that silica is hydrophilic unless modified, it is most likely that Uemura's silica is hydrophilic. Because it does not necessarily follow that the silica in Uemura's example 7 is hydrophobic, the §102 rejection is improper. *See, Eli Lilly & Co. v. Barr Laboratories, Inc.*, 251 F.3d 955 (Fed. Cir. 2001)(inherent anticipation requires that the claimed invention necessarily result from the prior art disclosure). In this regard, any burden of proof shifted to applicant by the Examiner's unsupported assertion is rebutted.

Similarly, the Office Action relies upon the mistaken belief that Uemura's example 7 contains a foaming surfactant to support the §102 rejection. However, Applicants submit that the ethoxylated castor oil in example 7 is not a foaming surfactant, and no evidence has been presented to the contrary. Moreover, the glycerol derivative in example 7 (1-hexyl-3-undecamethylhexasiloxane propynyl glycerol) is an "oil component" for combination with Uemura's polymers, not a foaming surfactant. *See, Uemura* (B1 version) at page 3, line 57 through page 4, line 10). Thus, Uemura does not contain a foaming surfactant, and it has not been shown otherwise. For this reason as well, the §102 rejection is improper.

Application No. 09/903,769
Reply to Office Action of October 22, 2003

In view of the above, Applicants respectfully submit that the rejection under 35 U.S.C. § 102 should be reconsidered and withdrawn.

Regarding the §103 rejections based on the Glen references, the claims require the oxyalkylenated compounds to be thickening agents. For such compounds to be thickening agents, they must have a substantial degree of oxyalkylenation. (See, pages 6-12 of the present application). In contrast, the Glen references disclose oxyalkenylated compounds suitable for use in his liquid compositions as humectants, solutes and surfactants. Given the purpose for which Glen includes such compounds in his compositions, these compounds are not going to have a substantial degree of oxyalkylenation, which means that they will not be thickening agents. This is particularly true in view of the fact that Glen's compositions are liquid. Based on Glenn's disclosure, one skilled in the art would not be motivated to use oxyalkylenated thickening agents, but rather would be motivated to use compounds which lather or maintain the liquid nature of compositions. In other words, no motivation would exist to modify Glenn's liquid compositions by adding any thickening agents, let alone oxyalkylenated thickening agents. Accordingly, the Glen references neither teach nor suggest the claimed invention which requires the presence of oxyalkylenated thickening agents.

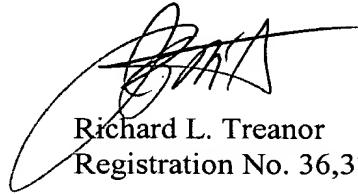
In view of the above, Applicants respectfully submit that the rejections under 35 U.S.C. § 103 are improper and should be withdrawn.

Application No. 09/903,769
Reply to Office Action of October 22, 2003

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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